

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Isabella Fiore, LLC  
Application Serial No.: 76/445173  
Filed: August 29, 2002  
Mark: FIORE  
Law Office: 108  
Examining Attorney: Sonya B. Stephens

APPLICANT'S BRIEF IN SUPPORT OF APPEAL

Commissioner for Trademarks  
United States Patent and Trademark Office  
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Arlington, Virginia 22202  
BOX TTAB

This brief is filed in support of Applicant's appeal from the Examining Attorney's Final Office Action dated February 5, 2004 (the "Final Action").

**I. INTRODUCTION AND PROCEDURAL HISTORY**

The Final Action was issued in connection with the application of Isabella Fiore, LLC (the "Applicant") to register the mark FIORE for a variety of *bags and related accessories* in Class 18 (the "Application"). Since 1998, Applicant has marketed an exclusive line of accessories, including bags, under the mark ISABELLA FIORE. At present, Applicant owns several United States Registrations in Class 18, including U.S. registration no. 2,540,428 for *women's bags; namely, handbags, purses, tote bags, shoulder bags, evening bags, and all-purpose carry bags*, and has a variety of other applications pending to register this mark and several related marks. See Exhibit A to Applicant's Response (the "Response") to the Non-Final Office Action submitted August 11, 2003 (the "Non-Final Action"), which provides a summary

of Applicant's marks and attaches evidence from the U.S. Patent and Trademark Office's ("PTO's") TESS database for each of the Applicant's marks.

On August 29, 2002, in connection with its plan to test-market a new but related line of accessories, the Applicant filed this intent-to-use application to register the mark FIORE for a wide variety of *bags and related accessories* in Class 18. In response to the Application, the Examining Attorney issued the Non-Final Action, which: (a) found no third-party mark to bar the Application; (b) found that the term FIORE is an Italian word meaning "*flower*" and thus required Applicant to supply the Italian translation of the mark; and (c) contained an initial refusal under Section 2(e)(4) of the Trademark Act, 15 U.S.C. §1052(e)(4), to register the mark FIORE, on grounds that the mark may be primarily merely a surname. In response to the Non-Final Action, Applicant complied with the Examining Attorney's translation requirement and requested that the Examining Attorney withdraw the preliminary refusal to register the mark, offering evidence that the mark is not primarily merely a surname. Subsequently, the Examining Attorney issued the Final Action, which accepted Applicant's Italian translation of the mark FIORE but finally refused registration of the mark as primarily merely a surname.

## **II. REQUEST FOR ORDER OF PUBLICATION**

### **A. OVERVIEW OF ARGUMENT**

If the principal or ordinary significance of a particular term is primarily that of a surname, it cannot be registered on the Principal Register without recourse to Section 2(f) of the Trademark Act of 1946. Conversely, where, as here, a term "has an ordinary meaning as a word and is relatively unimportant as a surname, it should be registered regardless that it may be a surname." *See In re Joints, Inc.*, 153 U.S.P.Q. 421 (T.T.A.B. 1967). The mark FIORE has multiple potential meanings and is relatively unimportant as a surname. In fact, nearly all of the

evidence in this case supports a finding of non-surname significance. The mark should be permitted registration on the Principal Register regardless of the fact that it also happens to be a surname.

## **B. APPLICABLE LEGAL STANDARDS**

### **1. Standard of Review.**

On appeal from an Examining Attorney's refusal to register, the question for the Trademark Trial and Appeals Board (the "TTAB") is whether or not, based on the record, the Examining Attorney's decision is correct. *See In re Bose Corp.*, 772 F.2d 866 (Fed. Cir. 1985); accord *J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition*, §21:1 (4th ed. 1999). The Federal Court of Appeals, in turn, reviews the TTAB's legal determinations *de novo* – *In re Int'l. Flavors & Fragrances, Inc.*, 283 F.3d 1361, 1365 (Fed. Cir. 1999) – and factual findings for substantial evidence – *On-Line Careline, Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1085 (Fed. Cir. 2000). "Substantial evidence" is "such evidence as a reasonable mind would accept as adequate" to support the conclusion. *Consol. Edison v. NLRB*, 305 U.S. 197, 229 (1938).

### **2. Determining Primary Surname Significance.**

Federal case law is well settled that a term may be refused registration on grounds that it is "primarily merely a surname" only if, when applied to a particular product, the PTO demonstrates that its primary significance to the purchasing public is that of a surname. *See In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831 (C.C.P.A. 1975); accord, *In re Etablissements Darty et Fils*, 759 F.2d 15, (Fed. Cir. 1985), citing *In re Kahan* (Examining Attorney bears the burden of proof) and *Ex parte Rivera Watch Corp.*, 106 U.S.P.Q. 145, 149 (Comm'r Pats. 1955) (the burden on the PTO is to establish the "primary significance to the

*relevant purchasing public*”). The burden is on the PTO to establish a *prima facie* case that this is so, and, only once such a case has been established does this burden shift to the applicant to offer proof tending to refute the case laid out by the PTO. *See id.*

The legislative history of the Trademark Act of 1946 indicates that the word 'primarily' was added to the then-existing statutory language with the intent, while excluding registration of names such as 'Johnson' or 'Jones,' not to exclude registration of names such as 'Cotton' or 'King' which, while surnames, have a primary significance other than as a surname. *See Ex parte Rivera Watch Corp.*, 106 U.S.P.Q. 145, 149 (Comm'r Pats. 1955); *Sears, Roebuck & Co. v. Watson*, 204 F.2d 32, 33-34 (D.C. Cir. 1953). In this context, "merely" is synonymous with "only," the question being whether the mark is primarily significant only as a surname. *See In re I. Lewis Cigar Mfg. Co.*, 205 F.2d 204, 206 (C.C.P.A. 1953).

The factors relevant to determining whether a term is primarily merely a surname include (i) whether the surname is rare; (ii) whether anyone connected with the applicant has the surname; (iii) whether the term has any other recognized meaning; and (iv) whether the term has the “look and feel” of a surname. *See In re Benthin Management GmbH*, 37 U.S.P.Q. 2d 1332 (T.T.A.B. 1995). A variety of additional factors which may establish non-surname significance are also listed under T.M.E.P. 1211.01(a) and T.M.E.P. 1211.02(b), including:

- (1) Whether the term has an ordinary language meaning;
- (2) Whether the term is the phonetic equivalent of a term which has an ordinary language meaning;
- (3) Whether the term has geographic significance; and
- (4) Whether the term identifies a historical place or person.

In this matter all of the foregoing factors warrant a finding in favor of the Applicant.

**C. THE EXAMINING ATTORNEY HAS NOT MET, AND CANNOT MEET, THE BURDEN OF PROOF TO JUSTIFY A SURNAME REFUSAL.**

In support of the Non-Final Action, the Examining Attorney adduced telephone directory evidence in the form of 3,991 listings indicating that the term “Fiore” is a surname in the United States. Subsequently, in response to the Response, the Examining Attorney adduced telephone directory evidence consisting of 5,193 listings, 318 articles, and 10 internet excerpts evidencing persons in the United States with the surname “Fiore.” This is the sum total of evidence submitted by the Examining Attorney in this matter. On review, the Examining Attorney is presumed to have provided the best support of refusal to register available. *See In re Federated Department Stores Inc.*, 3 U.S.P.Q. 2d 1541, 1542 n.2 (T.T.A.B. 1987). *See also In re Monotype Corp. PLC*, 14 U.S.P.Q. 2d 1070, 1071 (T.T.A.B. 1989). Likewise, any doubt on the issue of primary surname significance must be resolved in favor of the Applicant. *See In re Benthin Management GmbH*, 37 U.S.P.Q. 2d 1332 (T.T.A.B. 1995).

To justify a surname refusal, the Examining Attorney has the burden of producing substantial evidence that the mark’s primary significance to the relevant purchasing public is as a surname. Applicant respectfully submits that the burden has not been met in this case.

**1. The Examining Attorney has not established a *prima facie* case that a mark is primarily merely a surname.**

There is no bright-line rule as to the kind or amount of evidence necessary to make out a *prima facie* showing that a term is primarily merely a surname. *See* T.M.E.P. 1211.02(A). The question must be resolved only on a case-by-case basis. *See, e.g., In re Monotype Corp. PLC*, 14 U.S.P.Q.2d 1070 (T.T.A.B. 1989); *In re Pohang Iron & Steel Co., Ltd.*, 230 U.S.P.Q. 79 (T.T.A.B. 1986); *accord*, J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §§13:29 and 13:30 (4th ed. 1999). The quantum of evidence which is persuasive in finding surname significance in one case may be insufficient in another because of the

differences in the names themselves. *See In re Etablissements Darty et Fils*, 759 F.2d 15, 17 (Fed. Cir. 1985), *aff'd* 222 U.S.P.Q. 260 (T.T.A.B. 1984).

In this case, the Examining Attorney has adduced evidence that the term “Fiore” serves as a surname among certain people in the United States. Put more precisely, the Examining Attorney has shown that some 5,000 people, out of the approximately 288,600,000 recently estimated to populate the United States,<sup>1</sup> and out of the 1 billion records available in the LEXIS NEXIS database, have the surname “Fiore.” The Applicant respectfully submits that the use of “Fiore” as a surname among 0.00002% of the population does not constitute *prima facie* evidence that the term FIORE has *only* or even *primarily* surname significance. *See In re Kahan, supra*, 508 F.2d 831 (C.C.P.A. 1975) (TTAB found that listings in telephone directly could not, standing alone, meet the PTO's burden of showing that DUCHARME was primarily merely a surname).<sup>2</sup>

**2. The evidence provided by the applicant rebuts any *prima facie* case that the mark is not primarily merely a surname.**

Assuming the record contains a *prima facie* showing of surname significance, Applicant has rebutted that showing. Under T.M.E.P. 1211(b)(1), Applicant may establish the significance of a term not to be primarily merely a surname by producing evidence of persuasive alternative connotations and associations. For all of the reasons set forth below, the Applicant has shown that purchasers, upon seeing the mark, will be just as likely to recognize one or more of the many independent connotations of the word FIORE as they will attach any surname significance.

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<sup>1</sup> See U.S. Census Bureau, *Statistical Abstract of the United States:2003* at 8 (123d ed. 2003).

<sup>2</sup> Note that there was no evidence in *In re Kahan* that the DUCHAME mark had any foreign or other meaning or association, making the present case a more compelling one on appeal.

**a. The term FIORE is rare as a surname.**

Applicant does not dispute that the word FIORE is a surname. However, because FIORE is a rare surname in the United States, the Applicant submits that the American public does not perceive the term to be a surname, a factor which is determinative. *See In re United Distillers PLC*, 56 U.S.P.Q. 2d 1220 (T.T.A.B. 2000). In *United Distillers*, the TTAB found that, notwithstanding the Examining Attorney's argument to the contrary, the presence of only 1295 residential listings from the PhoneDisc database for the term HACKLER indicated that the term was rare and, as a result, reversed the Examining Attorney on appeal, finding that HACKLER was not primarily merely a surname but a registrable trademark for *alcoholic beverages*.

Here, the Examining Attorney found 5,193 telephone listings in the United States for the surname FIORE. Under *United Distillers* and *In re Benthin Management GmbH*, 37 U.S.P.Q. 2d 1332 (T.T.A.B. 1995), when considering directory database evidence, the massive scope of the database must be taken into account. *See United Distillers* at 1222 (comparing the 1295 records adduced by the Examining Attorney to the 80 million records available in the entire database). On this scale, FIORE appears as a surname among American households at roughly the same frequency as the name HACKLER. It is a rare surname.

**b. The term FIORE has an alternative recognized meaning.**

If there is a readily recognized meaning of a term, apart from its surname significance, registration should be granted on the Principal Register without evidence of acquired distinctiveness. *See* T.M.E.P. 1211.01(a)(1), citing *Fisher Radio Corp. v. Bird Electronic Corp.*, 162 U.S.P.Q. 265 (T.T.A.B. 1969) (BIRD held not primarily merely a surname despite surname significance); *accord, In re Hunt Electronics Co.*, 155 U.S.P.Q. 606 (T.T.A.B. 1967) (HUNT held not primarily merely a surname despite surname significance).

In the present case, as recognized by the Examining Attorney's request for an English translation, the mark FIORE has an alternative, recognized meaning: it means "flower" in Italian. The Applicant has produced evidence that Italian is increasingly popular as a language for study and practice in the United States, such that a "beginner word" like "flower" would be readily ascertained by a wide variety of people. See Exhibit C-1 to the Response. Such a conclusion is buttressed by the fact that Applicant's goods are sold primarily at luxury retailers such as Saks Fifth Avenue, Neiman Marcus and Bloomingdales, whose clientele can reasonably be expected to be relatively well-educated and well-traveled. Indeed, that FIORE may be recognized by the relevant public as an Italian word meaning "flower" is certainly aided by the fact that the symbol often accompanying ISABELLA FIORE merchandise is that of a single rose. See, e.g., Serial No. 76/516,165 on Exhibit A to the Response.

The Final Action contained an advisory statement that:

The applicant is respectfully advised . . . that the fact that a term is a foreign word with an English translation which has no surname significance does not overcome evidence that the foreign term is perceived in the United States as primarily merely a surname.

See Final Action at page 3. The Examining Attorney cites no authority for this proposition, and, as far as Applicant can tell, there is none. The only case citation provided is to *In re Winegard Co.*, 162 U.S.P.Q. 261 (T.T.A.B. 1969), which did not involve a mark having any foreign meaning. Indeed, under *In re Industrie Pirelli S.p.A.*, 9 U.S.P.Q. 2d 1564 (T.T.A.B. 1988), meaning in a foreign language can be the deciding factor in whether a mark has primary non-surname significance.

Here, in view of the standards employed in the *United Distillers, Fisher Radio Corp. v. Bird Electronics* and *In re Hunt Electronics Co.* decisions, the mark FIORE cannot be said to have only or even primarily surname significance. It presents at least as compelling a



circumstance as those present in the *Fisher Radio Corp. v. Bird Electronics* and *In re Hunt Electronics Co.* decisions, as, unlike the marks BIRD and HUNT, the mark FIORE does not sound to the American ear like a surname (see Paragraph e, below). Finally, this mark presents a more compelling case for registration than did the mark in HACKLER, as the only possible meanings for HACKLER were extremely obscure.<sup>3</sup> When, as here, a term is a rare surname, but suggests another meaning, that meaning likely supplants any potential surname significance. *See, e.g., In re BDH Two Inc.*, 26 U.S.P.Q. 2d 1556 (T.T.A.B. 1993) (term GRAINGERS held not primarily a surname where rare but "suggestive of grain").

**c. The mark FIORE has geographic significance.**

There are several historical and current place names that include the word FIORE, including street names, villa names, an entire town in Italy (as well as Paraguay), and the famous Gothic cathedral in Florence, Santa Maria del Fiore. *See Exhibit C-2* to the Response. Given that Isabella Fiore sources its footwear and many of its leathers and other fabrics that form its handbags in Italy, and given Italy's association with designer fashion and high-quality materials, these geographic associations were certainly intended by Applicant in choosing the mark FIORE and are likely highly suggestive to many in the relevant consuming public. In this way, the geographic meaning is far more significant than the surname significance of a term. *See In re Colt Industries Operating Corp.*, 195 U.S.P.Q. 75 (T.T.A.B. 1977) (FAIRBANKS held not primarily merely a surname because the geographical significance of the mark was determined to

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<sup>3</sup> In that case, the applicant's only evidence that the term HACKLER was from the Old English and signified an occupation was a poem titled "The Hackler from Groushall." *In re United Distillers PLC*, 56 U.S.P.Q. 2d 1220 (T.T.A.B. 2000).

be just as dominant as its surname significance). This factor therefore weighs in the Applicant's favor.

**d. The mark FIORE has historical significance.**

The significance of identifying a historical place or person can outweigh the potential surname meaning of a term. *See Lucien Piccard Watch Corp. v. Since 1868 Crescent Corp.*, 314 F. Supp. 329 (S.D.N.Y. 1970) (DA VINCI not primarily merely a surname because it connotes artist Leonardo Da Vinci); *In re Pyro-Spectaculars Inc.*, 63 U.S.P.Q. 2d 2022 (T.T.A.B. 2002) (SOUSA not primarily merely a surname because it connotes composer John Phillip Sousa). Applicant's evidence (*see Exhibit C-3* to the Response) demonstrates that the term FIORE is associated with a number of historical people, events, and customs, including the Italian mystic and philosopher Joachim of Fiore and the classic Italian folk dance, "Ballo del Fiore" ("Dance of the Flower"). Because, like the vast majority of place names involving FIORE, these historical associations are all Italian, the association is that much more likely to occur in the mind of the consumer. *See In re Pyro-Spectaculars Inc.* (association between SOUSA brand fireworks and John Phillip Sousa more likely because both connote patriotism). This factor likewise weighs in the Applicant's favor.

**e. The mark FIORE does not look or sound like a surname.**

If a mark does not have the look, sound, or pronunciation of a surname such that it would be widely recognized as a surname to the purchasing public, the surname significance becomes relatively unimportant. *See In re Garan Inc.*, 3 U.S.P.Q. 2d 1537, 1538 (T.T.A.B. 1987) (GARAN held not primarily merely a surname) and *In re Sava Research Corp.*, 32 U.S.P.Q. 2d 1380, 1381 (T.T.A.B. 1994) (SAVA held not primarily merely a surname). The mark FIORE falls into this category. Even to those unfamiliar with the Italian language, the term sounds like

the word “flower” and is likely therefore to be associated with the concept of flowers. American surnames rarely end in the letter “e”, and the non-silent, terminal “e” sound in FIORE is particularly unusual in this country. Indeed, this case presents an even more compelling rationale for registration on the Principal Register than did the *Garan* case, where the mark GARAN had no alternative meanings or connotations and yet was held not primarily merely a surname. Thus, under *Garan* and *Sava Research*, this factor also weights in favor of Applicant.

**f. No one associated with the Applicant has the surname “Fiore”.**

That the mark is the surname of the applicant supports the contention that the public would view the mark as a surname. *See In re Etablissement Darty et Fils*, 759 F.2d 15 (Fed. Cir. 1985); *aff’d*, 222 U.S.P.Q. 260 (T.T.A.B. 1984) (DARTY). There is no person associated with the Applicant who has the surname FIORE.

**g. The PTO has recognized the fact that equivalent marks are not primarily merely surnames.**

The term FIORE is the phonetic equivalent of the term FIORI, the Italian plural of FIORE, meaning “flowers.” FIORI and FIORE both thus have the same ordinary language meaning. The Applicant's evidence shows that the PTO has registered numerous marks using or incorporating “FIORI” without evidence of acquired distinctiveness. *See Exhibit B* to the Response. The evidence shows widespread use of the designation FIORI in the United States as a trademark, and consumers thus are accustomed to seeing the term FIORI used as a trademark. This evidence demonstrates that the primary significance of this mark is more likely to be viewed as a designator for goods than as a surname in the United States marketplace.

As stated in *In re Rivera Watch Corp.*, 106 U.S.P.Q. 145 at 149:

A trademark is a trademark only if it is used in trade. When it is used in trade it must have some impact upon the purchasing public, and it is that impact or impression which should be evaluated in determining whether or not the primary

significance of a word when applied to a product is a surname significance. If it is, *and it is only that*, then it is primarily merely a surname. *Id.*

The myriad PTO registrations for the mark FIORI and common law uses of the term FIORE as an identifier for goods do not allow for an inference that the term FIORI or FIORE is viewed by the public primarily as a surname. None of the businesses Applicant identified uses the term FIORI as a surname. Consumers will rely on their experience with these marks when they encounter the Applicant's mark, in which the term FIORE is likewise patently not used as a surname. *Cf. Rivera Watch*, 106 U.S.P.Q. at 149 (identifying five surnames whose status in the eyes of the purchasing public could not be doubted).

Finally, Applicant owns several registrations for the related mark ISABELLA FIORE. *See Exhibit A* to the Response. These registrations are *prima facie* evidence that the marks are registered and valid (*i.e.*, protectible), that Applicant owns the marks, and that Applicant has the exclusive right to use the marks in commerce. *See* 15 U.S.C. § 1115(a). That the PTO allowed these ISABELLA FIORE marks to register without proof of secondary meaning creates the presumption that the similar mark FIORE is not primarily a surname. *See, e.g., PaperCutter, Inc. v. Fay's Drug Co.*, 900 F.2d 558, 563 (2d Cir. 1990).

**3. The Examining Attorney has not correctly weighed Applicant's evidence.**

Of the eight factors to be weighed and balanced by the PTO, the TTAB and the federal courts in determining questions of surname significance (*see* pages 3-4, above), Applicant has offered evidence showing that the mark FIORE satisfies at least seven. In addition, Applicant has provided evidence that the PTO has recognized the non-surname significance in registering a variety of marks incorporating FIORE and its phonetical equivalent, FIORI.

The Examining Attorney's response to this body of evidence is to individually minimize the importance of each separate factor. In rapid succession, she states that:

- There is no American dictionary definition for the term FIORE, and foreign meaning is not enough to satisfy the requirement of alternative meanings;
- The fact that the term FIORE has “minor” significance as a geographical term does not impact the analysis;
- The existence of historical associations with the term FIORE is not helpful to Applicant’s case unless such historical associations are famous;
- The fact that no one associated with the Applicant has the surname FIORE does not obviate a surname refusal; and
- The fact that a surname is similar in sound to other marks found to have no surname significance does not impact the analysis.

See Final Action at pages 3-4.

That Applicant takes issue with each and every one of these statements on their individual merits is demonstrated in the foregoing arguments. More importantly, however, while the Examining Attorney has attempted to “chip away at” each of these factors individually, she refrains from weighing all of them together, as a whole. Rather than reviewing the entire wall of evidence that Applicant has offered, she dismantles each brick individually and explains why it, alone, is unworthy. But this is not the legal standard established by the TTAB or the federal courts, and case law is clear that all relevant factors are to be taken into account together, weighed, and balanced as a whole. *See, e.g., In re Benthin Management GmbH*, 37 U.S.P.Q. 2d 1333-4 (T.T.A.B. 1995). Of course, depending on the strength of the evidence, one of the factors can be determinative. *See id.* But if applicants were required to prove each one beyond all doubt, the presence of any surname significance at all would sound the death knell for any mark, no matter how arbitrary or fanciful.

Likewise, the Examining Attorney also cites several cases for the proposition that the existence of 11-24 listings showing use of a mark as a surname can be enough to establish that the mark is primarily merely a surname. *See* Final Action at page 3. But each one of the cases

cited for this proposition involved a mark that had no other alternative meanings or connotations. Indeed, in one of them, the absence of any Italian meaning for the mark at issue (PIRELLI) was relevant to the Court's determination in favor of the Examining Attorney, as was the fact that a key person associated with the applicant bore the mark as a surname. *See In re Industrie Pirelli S.p.A*, 9 U.S.P.Q. 2d 1564 (T.T.A.B. 1988). These cases are clearly inapposite from Applicant's case.

Applicant's evidence shows that the mark FIORE has a number of likely meanings to the relevant public beyond its potential surname significance, and, in fact, shows that, under the tests set forth in *In re Benthin Management GmbH* and detailed in T.M.E.P. 1211.01 and 1211.02, the mark is just as likely to be viewed as an arbitrary term as it is a surname. In this case and on this record, a fact-finder simply could not, without speculating, agree with the Examining Attorney's position and conclude that the primary significance of the mark FIORE to the purchasing public is that of a surname. *See, e.g. Blisscraft of Hollywood v. United Plastics Co.*, 294 F.2d 694 (2nd Cir. 1961) (discussing the evidentiary standard).

#### **D. CONCLUSION AND REQUEST FOR PUBLICATION**

In light of the alternative meaning of the term FIORE and its multiple connotations beyond its potential meaning as a surname, the relative rarity of the term as a surname, and the fact that the mark does not have the "look and feel" of a surname, it cannot be said that its significance to the relevant purchasing public, *i.e.*, purchasers and prospective purchasers of the applicant's *accessories*, would be solely that of a surname. In addition, Applicant has amply demonstrated that its mark and the Peerless Mark are not likely to be confused. On these bases, the Applicant respectfully requests that the Examining Attorney's final refusal to register this

mark be reversed, that the application file be remanded to the Examining Attorney for publication, and that the mark be permitted to register.

**IV. RESERVATION OF RIGHT TO REPLY AND REQUEST  
FOR ORAL ARGUMENT**

Applicant respectfully requests the opportunity to respond to any argument or evidence offered by the Examining Attorney by providing additional arguments and evidence in this case in the form of a reply brief. In the event that the TTAB would find it helpful, Applicant also requests the opportunity to appear before the TTAB for oral argument in this matter.

Respectfully submitted, this 1<sup>st</sup> day of October, 2004.

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## INDEX OF CITED CASES

<i>In re BDH Two Inc.</i> , 26 U.S.P.Q. 2d 1556 (T.T.A.B. 1993).....	9
<i>In re Benthin Management GmbH</i> , 37 U.S.P.Q. 2d 1332 (T.T.A.B. 1995).....	4, 5, 7, 13, 14
<i>Blisscraft of Hollywood v. United Plastics Co.</i> , 294 F.2d 694 (2nd Cir. 1961).....	14
<i>In re Bose Corp.</i> , 772 F.2d 866 (Fed. Cir. 1985).....	3
<i>In re Colt Industries Operating Corp.</i> , 195 U.S.P.Q. 75 (T.T.A.B. 1977).....	9
<i>Consol. Edison v. NLRB</i> , 305 U.S. 197 (1938).....	3
<i>In re Etablissements Darty et Fils</i> , 759 F.2d 15, (Fed. Cir. 1985).....	3, 6, 11
<i>In re Federated Department Stores Inc.</i> , 3 U.S.P.Q. 2d 1541 (T.T.A.B. 1987).....	5
<i>Fisher Radio Corp. v. Bird Electronic Corp.</i> , 162 U.S.P.Q. 265 (T.T.A.B. 1969).....	7
<i>In re Garan Inc.</i> , 3 U.S.P.Q. 2d 1537 (T.T.A.B. 1987).....	10
<i>In re Hunt Electronics Co.</i> , 155 U.S.P.Q. 606 (T.T.A.B. 1967).....	7
<i>In re I. Lewis Cigar Mfg. Co.</i> , 205 F.2d 204 (C.C.P.A. 1953).....	4
<i>In re Industrie Pirelli S.p.A</i> , 9 U.S.P.Q. 2d 1564 (T.T.A.B. 1988).....	8, 14
<i>In re Int'l. Flavors &amp; Fragrances, Inc.</i> , 283 F.3d 1361 (Fed. Cir. 1999).....	3
<i>In re Joints, Inc.</i> , 153 U.S.P.Q. 421 (T.T.A.B. 1967).....	2
<i>In re Kahan &amp; Weisz Jewelry Mfg. Corp.</i> , 508 F.2d 831 (C.C.P.A. 1975).....	3, 6
<i>Lucien Piccard Watch Corp. v. Since 1868 Crescent Corp.</i> , 314 F. Supp. 329 (S.D.N.Y. 1970).....	10
<i>In re Monotype Corp. PLC</i> , 14 U.S.P.Q. 2d 1070 (T.T.A.B. 1989).....	5
<i>On-Line Careline, Inc. v. Am. Online Inc.</i> , 229 F.3d 1080 (Fed. Cir. 2000).....	3
<i>PaperCutter, Inc. v. Fay's Drug Co.</i> , 900 F.2d 558 (2d Cir. 1990).....	12
<i>In re Pohang Iron &amp; Steel Co., Ltd.</i> , 230 U.S.P.Q. 79 (T.T.A.B. 1986).....	5
<i>In re Pyro-Spectaculars Inc.</i> , 63 U.S.P.Q. 2d 2022 (T.T.A.B. 2002).....	10



<i>In re Rivera Watch Corp.</i> , 106 U.S.P.Q. 145.....	3, 4, 11, 12
<i>In re Sava Research Corp.</i> , 32 U.S.P.Q. 2d 1380 (T.T.A.B. 1994).....	10
<i>Sears, Roebuck &amp; Co. v. Watson</i> , 204 F.2d 32 (D.C. Cir. 1953).....	4
<i>In re United Distillers PLC</i> , 56 U.S.P.Q. 2d 1220 (T.T.A.B. 2000).....	7, 9 n.3
<i>In re Winegard Co.</i> , 162 U.S.P.Q. 261 (T.T.A.B. 1969).....	8